

Customized PTO/SB/21 (04-07) D/C**TRANSMITTAL FORM**

(for all correspondence after initial filing)

Total number of pages in this submission =

Application #	10/784,812
Confirmation #	1182
Filing Date	02/24/2004
First Inventor	HOCKMAN
Art Unit	3635
Examiner	Chapman, Jeanette E.
Docket #	P07698US00/WEJ

ENCLOSURES (check all that apply)

- | | |
|---|---|
| <input type="checkbox"/> Fees calculated below | <input type="checkbox"/> Reply to Missing Parts/Incomplete Application |
| <input type="checkbox"/> Amendment/Reply | <input type="checkbox"/> Certified Copy of Priority Document(s) |
| <input type="checkbox"/> including Attachment(s) | <input type="checkbox"/> Information Disclosure Statement |
| <input type="checkbox"/> After Final Amendment/Reply | <input type="checkbox"/> Drawing(s) |
| <input type="checkbox"/> including Attachment(s) | <input type="checkbox"/> Terminal Disclaimer |
| <input checked="" type="checkbox"/> Petition to Withdraw Holding of Abandonment | <input checked="" type="checkbox"/> Copy of Stamped Receipt for Response filed January 31, 2007 |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> Copy of Response filed January 31, 2007 |

FEES CALCULATION: For claims if required and/or other fees as shown below:

	NOW	Previously Paid For	Present Extra	Rate	\$
<input type="checkbox"/> TOTAL CLAIMS		- 20		X \$ 50 =	
<input type="checkbox"/> INDEPENDENT CLAIMS		- 3		X \$ 200 =	
TOTAL OF ABOVE CLAIMS FEES =					
<input type="checkbox"/> Reduction by ½ for small entity status of applicant					
SUBTOTAL =					
<input type="checkbox"/> Fee for extension of time (per attached Petition)					
<input type="checkbox"/> Other fee for					
TOTAL OF ALL FEES =					0

☐ Payment by credit card. FORM PTO-2038 in the amount of \$ is attached.☒ The Director is authorized to charge any fee, additional fee or extension fee due in connection herewith to Deposit Account No. 12-0555:

- (1) if no payment or an insufficient payment is enclosed and a fee is due in connection herewith; or
(2) if no petition for extension of time is enclosed but an EOT is required - and in this event, applicant hereby petitions under 37 CFR 1.136(a) for an extension of time of as many months as are required to render this submission timely.

Date: May 22, 2007

*William E. Jackson FOR #28,518*By: William E. Jackson
Registration No.: 24,016**STITES & HARBISON PLLC** ♦ 1199 North Fairfax St. ♦ Suite 900 ♦ Alexandria, VA 22314
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Customized PTO/SB/21 (09-06)

TRANSMITTAL FORM

(for all correspondence after initial filing)

Total number of pages in this submission =	Application #	10/784,812
	Confirmation #	1182
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	First Inventor	HOCKMAN
	Art Unit	3635
	Examiner	Chapman, Jeanette E.
	Docket #	P07698US00/WEJ

ENCLOSURES (check all that apply)

<input checked="" type="checkbox"/> Fees calculated below <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> including Attachment(s) <input checked="" type="checkbox"/> After Final Reply <input type="checkbox"/> including Attachment(s) <input checked="" type="checkbox"/> Extension of Time Petition <input checked="" type="checkbox"/> Copy of Cover page of Resp. filed 5/17/06 and Issue Fee Transmittal for 10/898,552	<input type="checkbox"/> Reply to Missing Parts/Incomplete Application <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Drawing(s) <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> <input type="checkbox"/>
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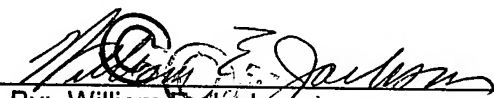
COPY**FEES CALCULATION:** For claims if required and/or other fees as shown below:

	NOW	Previously Paid For	Present Extra	Rate	\$
<input type="checkbox"/> TOTAL CLAIMS		- 20		X \$ 50 =	
<input type="checkbox"/> INDEPENDENT CLAIMS		- 3		X \$ 200 =	
TOTAL OF ABOVE CLAIMS FEES =					
<input type="checkbox"/> Reduction by ½ for small entity status of applicant					
SUBTOTAL =					
<input checked="" type="checkbox"/> Fee for extension of time (per attached Petition)					\$60
<input type="checkbox"/> Other fee for					
TOTAL OF ALL FEES =					\$60

☒ Payment by credit card. FORM PTO-2038 in the amount of \$60.00 is attached.☒ The Director is authorized to charge any fee, additional fee or extension fee due in connection herewith to Deposit Account No. 12-0555:

- (1) if no payment or an insufficient payment is enclosed and a fee is due in connection herewith; or
- (2) if no petition for extension of time is enclosed but an EOT is required - and in this event, applicant hereby petitions under 37 CFR 1.136(a) for an extension of time of as many months as are required to render this submission timely.

Date: January 31, 2007


By: William E. Jackson
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**PTO
STAMPED RECEIPT**

Application #	10/784,812
Confirmation #	1182
Filing Date	02/24/2004
First Inventor	HOCKMAN
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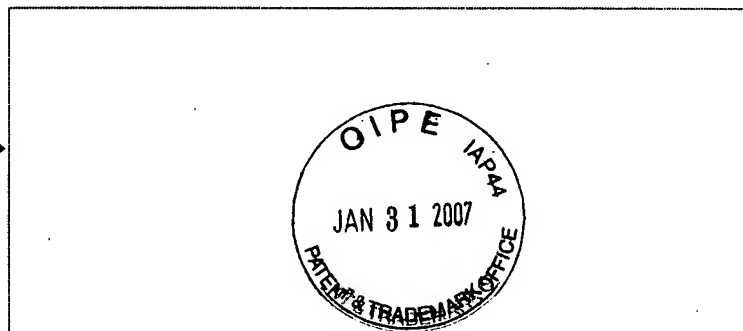
PAPERS SUBMITTED

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|---|--|
| <input checked="" type="checkbox"/> Transmittal Form | <input type="checkbox"/> IDS: Including |
| <input type="checkbox"/> Amendment/Response | <input type="checkbox"/> List of References |
| <input type="checkbox"/> with Attachments | <input type="checkbox"/> Search Report |
| <input checked="" type="checkbox"/> Response After Final | Refs. Transmitted |
| <input type="checkbox"/> with Attachments | <input type="checkbox"/> Statement of Relevance |
| <input checked="" type="checkbox"/> Petition for Extension of Time | <input type="checkbox"/> Issue Fee Transmittal |
| <input type="checkbox"/> Response to Missing Parts | <input type="checkbox"/> Publication Fee Transmittal |
| <input type="checkbox"/> Declaration | <input type="checkbox"/> Letter to Draftsman |
| <input type="checkbox"/> Translation of Application | sheets of formal drawings |
| <input type="checkbox"/> Assignment | (figs.) |
| <input type="checkbox"/> Priority Document | <input type="checkbox"/> Notice of Appeal |
| <input checked="" type="checkbox"/> Fee of \$60 (CREDIT CARD - PTO-2038) | <input type="checkbox"/> Appeal Brief |
| <input checked="" type="checkbox"/> Copy of Cover page of Resp. filed 5/17/06 and | <input type="checkbox"/> |
| Issue Fee Transmittal for 10/898,552 | |
| <input type="checkbox"/> | <input type="checkbox"/> |

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PTO Receipt Stamp →



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PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER MPEP §711.03(c) & 37 CFR § 1.181(a) NO ABANDONMENT IN FACT	Application #	10/784,812
	Confirmation #	1182
	Filing Date	02/24/2004
	First Inventor	HOCKMAN
	Art Unit	3635
	Examiner	Chapman, Jeanette E.
	Docket #	P07698US00/WEJ

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

S I R:

A Notice of Abandonment for the above-identified application was mailed on May 11, 2007 which indicated that this application was abandoned by failure to respond to the final Office Action mailed October 12, 2006 setting a three (3) month period for response. However, a **Notice of Appeal** (and accompanying Petition for Extension of Time for two (additional) months, together with a Pre-Appeal Brief Request for Review to the Office Action) was timely filed on March 28, 2007. Therefore, there was no abandonment in fact and the Notice of Abandonment has been mailed in error.

For evidence of the timely filing of the Notice of Appeal, please note that the above noted documents are found in PAIR and are indicated as being filed on March 28, 2007.

HOWEVER, it is noted that PAIR does not evidence the filing of the Response After Final on January 31, 2007. Therefore, to complete the PTO records, a copy of this previous Response After Final is attached together with a copy of the PTO stamped receipt acknowledging timely receipt (with a one month extension of time) of this Response. Entry of this Response After Final for the record is thus also solicited.

In view of the fact that there was no abandonment in fact, withdrawing of the

holding of abandonment pursuant to MPEP §711.03(c) is requested. Further, prompt action on the previously filed Pre-Appeal Brief Request for Review is also requested.

This Petition is filed without fee since no fee is required.

Date: May 22, 2007

Respectfully submitted,

William E. Jackson For
#28,578

By: William E. Jackson

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Customized PTO-2038 (9-2006)

UNITED STATES PATENT AND TRADEMARK OFFICE

Credit Card Payment Form

Credit Card Information	
Credit Card Type:	American Express
Credit Card Account Number:	██████████ 009
Credit Card Expiration Date:	12/09
Name on Credit Card:	L&T US PTO FEES
Payment Amount:	\$60.00
Cardholder Signature: <i>William E. Jordan</i>	Date: January 31, 2007
<small>Refund Policy: The USPTO may refund a fee paid by mistake or in excess of that required. A change of purpose after the payment of a fee will not entitle a party to a refund of such fee. The office will not refund amounts of \$25 or less unless a refund is specifically requested, and will not notify the payor of such amounts (37 CFR § 1.26). Refund of a fee paid by credit card will be issued as a credit to the credit card account to which the fee was charged. Service Charge: There is a \$50 service charge for processing each payment refused (including a check returned "unpaid") or charged back by a financial institution (37 CFR 1.21(m)).</small>	
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Request and Payment Information	
<input checked="" type="checkbox"/> PATENT FEE - For: Extension of Time Fee – Small entity Appln. No.: 10/784,812 Confirmation No.: 1182	
<input type="checkbox"/> PATENT MAINTENANCE FEE: Patent No.: Appln. No.:	
<input type="checkbox"/> TRADEMARK FEE - For: Appln. No.: Regis. No.: Mark:	
Attorney Docket No.: P07698US00/WEJ	

If the cardholder includes a credit card number on any form or document other than the Credit Card Payment Form, the US Patent and Trademark Office will not be liable in the event that the credit card number becomes public knowledge.

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RESPONSE TO FINAL REJECTION	Application #	10/784,812
	Confirmation #	1182
	Filing Date	02/24/2004
	First Inventor	HOCKMAN
	Art Unit	3635
	Examiner	Chapman, Jeanette E.
	Docket #	P07698US00/WEJ

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

In response to the Official Action dated October 12, 2006, Applicant respectfully traverses the rejections asserted by the Examiner and respectfully requests reconsideration based upon the following remarks.

COP

I. Claim Rejections Under 35 U.S.C. §112

The Official Action rejects claims 1 and 7 under 35 U.S.C. §112, first paragraph, as based on a disclosure which is not enabling. The Official Action asserts that “The spanning means and the means for connecting being located below the top of adjacent seams” and “the pipe mounted close to the surface of the base portion of the roof surface” is essential to the practice of the invention, but not included in and not enabled by the disclosure.” (Emphasis added). Applicant respectfully traverses the Examiner’s assertions and respectfully points out below that there is, in fact, enabling disclosure found in various portions of the application, specification and drawings.

The Examiner’s attention is directed to the following quotations from the Applicant’s original specification:

At page 4, paragraph 0010, bridging over to page 5 it is stated: “The end result of the present invention is that the pipe is mounted parallel to the surface of the roof and below the height of the raised portions of the roof.” (Emphasis added).

Page 6, paragraph 0023 states: “A partial cross-sectional view of Fig. 1 is illustrated in Fig. 3 which shows bosses B₁, B₂ formed at the side portions of the snow brake base 107. The bosses B₁ and B₂ are formed close enough to the

bottom of the snow brake base 107 so that the interconnected pipes 109 are located between the rolled seams. Thus, pipe 109 is located close enough to the roofing surface to block the passage of snow and ice but far enough away to allow for melting snow or rain water to pass beneath the pipe 109. (Emphasis added).

Page 7, paragraph 0026, states: "Fig. 2B and Fig. 4 illustrate a further embodiment of the present invention wherein depressions D_1 and D_2 are defined on the sides of the snow brake base 107 and pipes 109 are dimensioned to be inserted into the depressions."

Referring to Figure 4 of the application drawings, it should be clear that the depressions D_1 and D_2 are configured and sized to fall below the top of the vertical seam formed between elements 101 and 103. Thus, it is clear that the pipe inserted into opening D_2 is located below the top of the adjacent vertical seams and is also mounted close to the surface of the base portion of the roof surface 101.

In view of the above express disclosure including the drawings and the written description thereof, it is clear that there is enabling disclosure present for claims 1 and 7 and that the rejection under the first paragraph of § 112 is not well taken.

Reconsideration and withdrawal of this rejection are respectfully requested.

The Examiner has also rejected claims 1 and 7 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner's rejection is based upon the same erroneous factual assertions pertaining to the alleged absence of sufficient teachings in the specification. Because the specification expressly and clearly explains the location of the spanning means to be located below the top of adjacent seams and for the pipe to be mounted close to the surface of the base portion of the roof surface, it is respectfully submitted that the rejection under second paragraph of §

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112 is not well taken and should be withdrawn. Reconsideration and withdrawal are respectfully requested.

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II. The Rejection Under 35 U.S.C. § 101

Claims 7 thru 8 stand "provisionally rejected under 35 U.S.C 101 as claiming the same invention as that of claims 1-8 of co-pending Application No. 10/784,812."

(Emphasis added). For the following reasons this rejection is in error and should be withdrawn.

First, the alleged "co-pending application" serial number is identical to the serial number of the present application. Thus, the Examiner is in reality rejecting claims 7 and 8 of the present application over claims 1 and 8 of the present application. This is illogical and is not authorized under the pertinent statutes and case law. Applicant assumes that the Examiner meant to make reference to co-pending application Serial No. 10/898,552. Even if that assumption is made, the rejection also is illogical and should be reconsidered and withdrawn since on or about May 17, 2006, in response to the Office Action dated March 30, 2006 in Serial No. 10/898,552, Applicant requested that claims 1 thru 8 of the co-pending application be cancelled "without prejudice." See the attached response After Final Rejection dated May 17, 2006, filed in Serial No. 10/898,552. Accordingly, Applicant respectfully requests reconsideration of the alleged rejection of double patenting under 35 U.S.C. § 101 based on claims no longer in the co-pending application.

Claims 1 through 6 of the present application stand "provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-6 of co-pending Application Serial No. 10/898,552. As discussed above, it is

believed that the Examiner has erred in making this alleged rejection because claims 1 thru 6 of the co-pending application Serial No. 10/898,552 were cancelled on May 17, 2006. Accordingly, the provisional double patenting rejection of claims 1 through 6 based upon the obviousness-type double patenting is in error. Applicant respectfully requests reconsideration and withdrawal.

Applicant wishes to note for the Examiner that application claims 9 thru 13 of his co-pending Serial No. 10/898,552 have been allowed and the issue and publication fees were paid on or about November 29, 2006. See attached PTOL 85.


III. Summary

In view of the above, it is respectfully submitted that the final rejections of claims 1 through 8 are clearly in error, should be reconsidered and withdrawn because they are based upon alleged facts that are incorrect.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,

Date: January 31, 2007


By: William E. Jackson
Registration No.: 24,016

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